

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

PRINTING RESEARCH, INC., and
HOWARD W. DEMOORE,

Plaintiffs,

v.

**WILLIAMSON PRINTING CORPORATION
BILL L. DAVIS, and
JESSE S. WILLIAMSON,**

Defendant.

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Civil Action No. _____

3-990V1154-D

ORIGINAL COMPLAINT

Plaintiffs, Printing Research, Inc. and Howard W. DeMoore (collectively "Plaintiffs"), file this Complaint against Defendants Williamson Printing Corporation, Bill L. Davis, and Jesse S. Williamson (collectively "Defendants"), and for their causes of action would show the Court the following:

PARTIES

1. Plaintiff Printing Research, Inc. ("PRI") is a corporation organized and existing under the laws of the State of Texas and has its principle place of business at 10954 Shady Trail, Dallas, Texas 75220.

2. Plaintiff Howard W. DeMoore ("DeMoore") is an individual with a business address of 10954 Shady Trail, Dallas, Texas 75220.

3. On information and belief, Defendant Williamson Printing Corporation ("WPC") is a corporation organized and existing under the laws of the State of Texas and has its principal

place of business at 6700 Denton Drive, Dallas, Texas 75235, and may be served through its registered agent at the following address:

Jerry B. Williamson
6700 Denton Drive
Dallas, Texas 75235

4. On information and belief, Defendant Bill L. Davis ("Davis") is an individual residing at 1126 Tipton Road, Irving, Texas 75060, where he may be served with service of process.

5. On information and belief, Defendant Jesse S. Williamson ("Williamson") is an individual residing at 5738 Caruth Boulevard, Dallas, Texas 75209, where he may be served with service of process.

JURISDICTION

6. This is an action arising under the patent laws of the United States (Title 35 United States Code), to correct the designation of inventorship which currently appears on United States Patent No. 5,630,363 ("the '363 patent) under 35 U.S.C. § 256 (Count I). Additionally, this action is brought to obtain relief from the infringement of the '363 patent under 35 U.S.C. § 271 (Count II), and to recover attorneys' fees for this action under 35 U.S.C. § 285 (Count VI). Subject matter jurisdiction is therefore proper in this Court under 28 U.S.C. § 1338. Venue is proper in this Court under 28 U.S.C. § 1391(b), (c) and 1400(b).

7. This Court has supplemental jurisdiction under 28 U.S.C. §1367 as to all other causes of action alleged herein (Counts III, IV, and V).

8. On information and belief, Davis and Williamson reside in this District, and WPC maintains its primary place of business in this District. Accordingly, Defendants may be served within this District and are properly subject to the personal jurisdiction of this Court.

BACKGROUND

9. DeMoore has developed, marketed, and sold innovative equipment and supplies for the printing industry for over thirty years, and currently serves as Chairman of PRI, a corporation dedicated to supply such equipment and supplies to printers across the globe.

10. During 1994 and 1995, building upon his prior work with lithographic and flexographic printing technology, DeMoore conceived and developed a single-pass printing process and apparatus having successive printing stations for selectively applying printing inks and coatings to paper and other substrates, in which one of the stations utilizes a flexographic process and at least one of the successive stations utilizes a lithographic process. DeMoore and PRI termed this new invention the "Lithoflex" system. DeMoore and PRI developed a commercial apparatus, termed a printer/coater unit, for use with existing printing presses, which would allow those printing presses to utilize the Lithoflex system. PRI is licensed under all of DeMoore's rights to the inventions represented by the Lithoflex system and the printer/coater unit.

11. In October of 1994, Plaintiffs tested certain flexographic coating technology using a two-color Heidelberg lithographic press (the "pilot press") located at a PRI facility. The testing produced samples (the "flexographic samples") illustrating potential applications of that technology. Soon thereafter, DeMoore conceived and began development of the Lithoflex system, in which flexographic coating technology was incorporated within a single-pass press having downstream lithographic printing stations.

12. WPC is today, and was in 1994, a provider of commercial printing services. In 1994, WPC possessed and utilized a Heidelberg CD multi-color press at its Dallas facilities (the "WPC press").

13. Plaintiffs, believing WPC to possess a press of the size and type appropriate for further development of the Lithoflex system, and believing WPC to be a potential customer of the Lithoflex system, contacted WPC through PRI employees Mr. Steve Garner ("Garner") and Mr. John Bird ("Bird") in November of 1994. Bird and Garner showed representatives of WPC the flexographic samples and briefly described DeMoore's Lithoflex system. Following the presentation, WPC expressed interest in acquiring the Lithoflex system technology for use in its own systems.

14. In late 1994 and in 1995, but well prior to August 14, 1995, PRI disclosed to WPC further details of the Lithoflex system and the printer/coater units. In December of 1994, PRI demonstrated components of the Lithoflex system to representatives of WPC, including Davis and Williamson, using PRI's pilot press.

15. PRI's disclosure of the Lithoflex system concept and technology to WPC was made under a confidentiality agreement ("the Confidentiality Agreement") between PRI and WPC, in which, in exchange for the concept and details of the Lithoflex system and the printer/coater units, WPC agreed to maintain the confidentiality of the same.

16. WPC and PRI thereafter entered into an purchase agreement ("the Purchase Agreement") whereby PRI agreed to sell several printer/coater units to WPC and install the same on WPC presses. Under the terms of the agreement, WPC would pay reduced prices for the printer/coater units and installation in exchange for allowing PRI access to WPC's presses for further testing and fine-tuning of the Lithoflex system.

17. Under the terms of the Purchase Agreement, PRI delivered a printer/coater unit to WPC on or about November 15, 1995. The printer/coater unit was installed on the first station of WPC's press for testing. Subsequent stations in the WPC press line included lithographic

printing stations. The first sheets were "Lithoflexed" on the WPC press using the printer/coater unit on December 6, 1995. The testing of the printer/coater unit on the WPC press was a success.

18. On information and belief, WPC continues to utilize DeMoore's Lithoflex system.
19. On August 14, 1995, U.S. Application Serial No. 515,097 ("the '097 application"), for a "Combined Lithographic/Flexographic Printing Apparatus and Process," was filed with the United States Patent & Trademark Office ("PTO"). The '097 application named only Davis and Williamson as inventors, and was subsequently assigned to WPC. Defendants never informed Plaintiffs of any intent by Plaintiffs to file, or that Plaintiffs did file, the '097 application. On information and belief Davis and Williamson are employees of WPC. The application issued to WPC as the '363 patent and describes and claims the Lithoflex system. The '363 patent remains assigned to WPC.
20. On information and belief, Davis and Williamson are not actual inventors of the claimed invention of the '363 patent. The Lithoflex system as invented by DeMoore and explained to WPC by PRI includes all the limitations of the claims of the '363 patent. DeMoore is therefore the sole inventor of the invention claimed in the '363 patent. On information and belief, Defendants knew throughout the prosecution of the '363 patent that DeMoore was the sole actual inventor of the claimed invention of the '363 patent, and intended to fraudulently and wrongfully deprive Plaintiffs of the benefits of DeMoore's invention.
21. The omission of DeMoore from the list of named inventors in the '097 application and the '363 patent was committed without any deceptive intent on the part of DeMoore or PRI.
22. Having successfully tested the Lithoflex system and printer/coater unit on the WPC press, PRI endeavored to market the Lithoflex system to other potential buyers. To that

end, representatives of PRI contacted Hallmark Cards, Inc. ("Hallmark") for the purpose of selling Lithoflex system components to Hallmark.

23. Negotiations between PRI and Hallmark regarding the sale of Lithoflex system components to Hallmark ensued and progressed to a point where agreement appeared eminent. Before entering a purchase order with PRI, however, Hallmark commissioned a patent infringement search to examine the propriety of Hallmark's proposed use of the Lithoflex system.

24. On information and belief, and as a result of this patent infringement search, counsel for Hallmark became aware of the '363 patent, evaluated the proposed use of the Lithoflex system in light of the '363 patent, and concluded that the proposed use would infringe the '363 patent. Upon being informed by counsel of the potential for patent infringement posed by the use of the Lithoflex system, and as a direct result of the existence of the '363 patent, Hallmark concluded that it would not purchase any Lithoflex system components from PRI.

25. In December of 1998, Hallmark informed PRI of the existence of the '363 patent, and that Hallmark would not purchase any Lithoflex system components from PRI. Hallmark further indicated to PRI at this time that Hallmark's purchasing decision was based on the existence of the '363 patent and the potential for infringement of the same.

26. Plaintiffs had no knowledge of the '097 application or of the '363 patent prior to being informed of the patent's existence by Hallmark.

27. Defendants' acquisition and WPC's ownership of the '363 patent directly resulted in the loss of prospective sales to Hallmark, by PRI, of Lithoflex system components and supplies. Defendants' acquisition and WPC's ownership of the '363 patent has further

subsequently resulted in a general inability by Plaintiffs to exploit DeMoore's Lithoflex system, including the prevention of sales of Lithoflex system components and supplies.

28. Upon information and belief, Defendants applied for and secured the issuance of the '363 patent, and WPC secured ownership of the '363 patent, with full knowledge of the nature of the exclusive rights conferred by the '363 patent, namely the exclusive right to make use or sell the claimed invention of the '363 patent.

29. Upon information and belief, Defendants applied for and secured the issuance of the '363 patent, and WPC secured ownership of the '363 patent, with full knowledge that potential users of the claimed invention of the '363 patent, including potential customers of Plaintiffs would become aware of the '363 patent, would likely forego purchases of Lithoflex system components or supplies from Plaintiffs.

30. Thus Defendants applied for and secured the issuance of the '363 patent, and WPC secured ownership of the '363 patent, with full knowledge that their actions would severely limit PRI from making, using, or selling the claimed invention of the '363 patent, and that their actions could thereby cause Plaintiffs to lose prospective sales of Lithoflex system components and supplies.

30. On information and belief, Defendants intended their acquisition and ownership of the '363 patent to prevent Plaintiffs from selling Lithoflex system components and supplies.

COUNT I

CORRECTION OF INVENTORSHIP

31. Plaintiffs repeat the allegations of Paragraphs 9-30 above.

32. The '097 application and the '363 patent incorrectly omit DeMoore as an inventor of the methods or apparatus claimed therein. The '097 application and the '363 patent further

incorrectly list Davis and Williamson as inventors of the methods and apparatus claimed therein, despite the fact that neither Davis nor Williamson is a sole or joint inventor of any method or apparatus so claimed. DeMoore is the sole inventor of all methods and apparatus claimed in the '097 application and '363 patent. The omission of DeMoore from the list of inventors designated in the '097 application and the '363 patent arose without any deceptive intent on the part of DeMoore.

33. The PTO, through the Commissioner, is empowered to correct inventorship errors, including misjoinder, where error lists a person who is not an inventor, and nonjoinder, where error fails to list a person who is an inventor. Independently, under Title 35, United States Code, § 256, the federal courts and thus this Court may, on notice and hearing of all parties concerned, determine the inventorship of any patent and make corrections as appropriate. This Court may correct errors of misjoinder without regard to the existence of deceptive intent with respect to the error by either the misjoined person or the actual inventors. This Court may correct errors of nonjoinder only where there was no deceptive intent with respect to the error on the part of the nonjoined actual inventor.

34. Concurrent with the filing of this action, Plaintiffs have notified each person and entity believed to be affected by Plaintiffs' claim that the designation of inventorship of the '363 patent is incorrect. Such persons include the currently designated inventors of the '363 patent, Davis and Williamson, and the assignee of Davis's and Williamson's rights to the '363 patent, WPC. Each such person or entity is in fact a named defendant in this suit and has been provided with a copy of this pleading.

35. Pursuant to Title 35, United States Code, § 256, Plaintiffs request the Court, after an appropriate hearing, to order correction of inventorship of the '363 patent. Plaintiffs

specifically request that the Court remove Davis and Williamson as named inventors for the '363 patent, and add DeMoore as the sole actual inventor for the '363 patent. In the alternative, Plaintiffs specifically request that the Court add DeMoore as a joint inventor for the '363 patent, if the Court determines that DeMoore is a co-inventor of the subject matter claimed in the '363 patent.

COUNT II

PATENT INFRINGEMENT

36. Plaintiffs repeat the allegations of Paragraphs 9 – 30 and 32-35 above.

37. DeMoore is the actual sole inventor of the claimed invention of the '363 patent, and as such is equitable title holder to the '363 patent with standing to sue for infringement of the '363 patent.

38. Davis and Williamson are not actual inventors of the '363 patent and possess no rights under the '363 patent. The assignment of Davis's and Williamson's "rights" under the '363 patent to WPC therefore conveys no actual rights under the '363 patent to WPC. Specifically, WPC possess no right to make, use, or sell the claimed invention of the '363 patent.

39. Upon information and belief, WPC has used and continues to use the claimed methods and apparatus of the '363 patent in its printing operations in this judicial district and elsewhere.

40. Upon information and belief, WPC's use of the claimed methods and apparatus of the '363 patent in its printing operations constitutes infringement in violation of 35 U.S.C. § 271 and Plaintiffs" exclusive rights under the '363 patent.

41. On information and belief, WPC will continue to engage in acts of infringement unless permanently enjoined by this Court.

42. The infringement of the '363 patent by WPC has caused irreparable injury to Plaintiffs and will continue to cause irreparable injury to Plaintiffs unless WPC is permanently enjoined by this Court.

43. The infringement of the '363 patent by WPC has caused and continues to cause damage to Plaintiff, including impairment of the value of the '363 patent and lost sales and profits in an amount yet to be determined.

44. On information and belief, WPC's infringement of the '363 patent in this judicial district and elsewhere has been and continues to be willful.

COUNT III

CONVERSION

45. Plaintiffs repeat the allegations of Paragraphs 9-30, 32-35, and 37-44 above.

46. DeMoore is the actual sole inventor of the methods and apparatus claimed in the '363 patent, and as such, on May 20, 1997, the date of issue of the '363 patent, DeMoore held equitable title to the patent rights associated with that invention.

47. On May 20, 1997, in the City of Dallas, Dallas County, Texas, Defendants unlawfully and without authority assumed dominion and control over DeMoore's property, which is described in Paragraph 46, to the exclusion of DeMoore's rights in this property, in that on that date the '363 patent issued to Defendants. Defendants thus assumed the exclusive right to make, use, or sell the claimed invention of the '363 patent, thereby preventing DeMoore or his licensees from enjoying any benefits of DeMoore's invention.

48. The value of the property at the time and place of the conversion was in excess of \$ 450,000, for which sum Plaintiffs sue.

49. Plaintiffs are entitled to interest on the sum of \$ 450,000 from May 20, 1997, at the prejudgment rate of interest.

50. Defendants' conversion of claimed invention of the '363 patent, as alleged above, was fraudulent in that the conversion was accomplished through affirmative misrepresentations of the inventorship of the claimed methods and apparatus, made by Defendants to the PTO during the application for and prosecution of the '363 patent, with full knowledge of the inaccuracy of those statements and to the detriment of DeMoore, the actual inventor of the invention. Accordingly, Plaintiffs ask that exemplary damages be awarded against the Defendants.

COUNT IV

TORTIOUS INTERFERENCE WITH PROSPECTIVE BUSINESS RELATIONS

51. Plaintiffs repeat the allegations of Paragraphs 9-30, 32-35, 37-44, and 46-50 above.

52. Defendants obtained the '363 patent, knowing that DeMoore was in fact the sole actual inventor of the methods and apparatus claimed therein, and knowing and intending that these actions could prevent Plaintiffs from exploiting the claimed invention of the '363 patent through the sale of Lithoflex system components and supplies.

53. In 1998, Plaintiffs and Hallmark agreed in principle, pending the completion of a patent infringement study, to a purchase order in which Plaintiffs would sell Lithoflex system components and supplies to Hallmark.

54. A Hallmark patent infringement study revealed the existence of the '363 patent to Hallmark.

55. Hallmark subsequently chose not to agree to the purchase order, based upon a fear of potential liability for infringement of the '363 patent.

56. Plaintiffs lost its prospective purchase order with Hallmark as a result of Defendants' acquisition of WPC's ownership of the '363 patent. There is more than a reasonable probability that Plaintiffs would have obtained the purchase order in the absence of Defendants' actions.

57. Defendants' actions in obtaining the '363 patent, as alleged above, were fraudulent in that the acquisition of the '363 patent was accomplished through affirmative misrepresentations of the inventorship of the claimed methods and apparatus, made by Defendants to the PTO during the application for and prosecution of the '363 patent, with full knowledge of the inaccuracy of those statements and to the detriment of DeMoore, the actual inventor of the invention. Accordingly, Plaintiffs ask that exemplary damages be awarded against the Defendants.

58. Defendants' interference with Plaintiffs' prospective business contract with Hallmark has caused damage to Plaintiffs, including specifically by depriving Plaintiffs of profits that they would otherwise have received under the contract. Defendants' interference with Plaintiffs' prospective business contracts continues by preventing additional sales of Lithoflex components and supplies to Hallmark and other third parties.

COUNT V

BREACH OF CONTRACT

59. Plaintiffs repeat the allegations of Paragraphs 9-30, 32-35, 37-44, 46-50, and 51-58 above.

60. In 1995, and well prior to August 14, 1995, representatives of PRI and WPC agreed that, in exchange for the disclosure by PRI, to WPC, of the details of Plaintiffs' Lithoflex system and printer/coater units, WPC would maintain the confidentiality of those details.

61. PRI subsequently disclosed the details of Plaintiffs' Lithoflex system and printer/coater units, and has fully performed its obligations under the agreement.

62. WPC breached the contract described in Paragraph 60 and breached its position of trust and confidence, when Defendants surreptitiously filed the '097 patent, thus disclosing the details of the Lithoflex system and printer/coater units to the PTO, and ensuring the disclosure of the details to the public at large upon issuance of any patent therefrom. The details were disclosed to the public, in further breach of the agreement, by the issuance of the '363 patent on May 20, 1997.

63. As a result of WPC's breach of contract and breach of trust and confidence, Plaintiffs have suffered damages. In particular, Plaintiffs have suffered consequential damages, in that WPC's disclosure of the details to the PTO and the public has created a prior art reference which serves as a potential barrier against the acquisition of additional patent protection by Plaintiffs, the monetary value of which is to be determined at trial.

COUNT VI

ATTORNEYS' FEES

64. Plaintiffs repeat the allegations of Paragraphs 9-30, 32-35, 37-44, 46-50, 51-58, and 60-63 above.

65. This is an exceptional case within the meaning of 35 U.S.C. § 285. Accordingly, Plaintiffs ask that they be awarded, and that Defendants be made to compensate Plaintiffs for, Plaintiffs' reasonable attorneys' fees.

PRAYER

WHEREFORE, Plaintiffs prays for the entry herein of a final judgment:

(a) correcting the inventorship of the '363 patent, pursuant to 35 U.S.C. § 256, by removing Davis and Williamson as inventors of the invention of the '363 patent and naming DeMoore sole inventor of the claimed invention of the '363 patent or, in the alternative, by naming DeMoore a joint inventor of the claimed invention of the '363 patent;

(b) holding the '363 patent infringed by WPC;

(c) enjoining WPC and its servants, agents, officers and employees and any and all persons acting by or under WPC's authority, or in privity therewith, from engaging in further acts of infringement of the '363 patent;

(d) requiring WPC to account to Plaintiffs for any and all profits derived by WPC, and to compensate Plaintiffs under 35 U.S.C. § 284 for all damages, including lost profits, sustained by Plaintiffs due to WPC's acts of infringement of the '363 patent, together with interest, and that such damages be trebled by reason of the willful and deliberate nature of WPC's infringement;

(e) requiring Defendants to pay the costs of this suit, including, as this is an exceptional case pursuant to 35 U.S.C. § 285, Plaintiffs' reasonable attorneys' fees incurred in bringing and prosecuting its patent claims;

(f) requiring Defendants to compensate Plaintiffs for all damages sustained by Plaintiffs as a result of Defendants' conversion of Plaintiffs' rights to the invention claimed in the '363 patent, including pre- and post-judgment interest and exemplary damages, the amount of which are to be determined at trial;

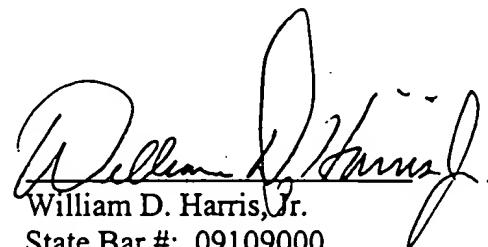
(g) requiring Defendants to compensate Plaintiffs for all damages sustained by Plaintiffs as a result of Defendants' tortious interference with Plaintiffs' prospective business relations, including pre- and post-judgment interest and exemplary damages, the amount of which are to be determined at trial;

(h) requiring WPC to compensate Plaintiffs for all damages sustained by Plaintiffs as a result of WPC's breach of the Confidentiality Agreement, including pre- and post-judgment interest;

(i) that Plaintiffs be awarded all other such relief as the court may find equitable.

RECEIVED - RECORDED

Respectfully submitted:



William D. Harris, Jr.
State Bar #: 09109000
L. Dan Tucker
State Bar #: 20276500
Robert T. Mowrey
State Bar #: 14607500
W. Edward Woodson
State Bar #: 24003207
LOCKE LIDDELL & SAPP LLP
2200 Ross Avenue, Suite 2200
Dallas, Texas 75201-6776

ATTORNEYS FOR PLAINTIFFS